

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7447 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BECHAR @ TINU HARJIVAN

NANDASANA

Versus

STATE OF GUJARAT

Appearance:

MR YATIN SONI for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

MR YS LAKHANI for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 20/02/98

ORAL JUDGEMENT

1. The petitioner has filed the present petition with a prayer to transfer the proceedings of Sessions Case No.47/95 from the file of Ld.Addl.Sessions Judge, Porbandar to anyother appropriate court outside the district of Junagadh and Porbandar and preferably at

Ahmedabad city.

2. It may be noted that initially the petitioner had joined one Chandrakant Jethalal Joshi, the original complainant who has given FIR from which said Sessions Case No.47/95 has been registered against the present petitioner and other accused as opponent No.2. However, on 30.12.1997 the petitioner prayed permission to delete the opponent No.2. That vide order dated 30.12.1997 rule was issued and made returnable on 22.1.1998. The Ld.APP has waived service of rule on behalf of respondent No.1-State. That the interim relief in terms of para 15(C) of the petition was granted.

3. That the original complainant-Chandrakant Jethalal Joshi had given FIR to the police station, Porbandar City B Division on 20.4.95 in respect to robbery having taken place at his residence. He had alleged that clothes and ornaments worth Rs.70,000/- have been looted by assailants in the presence of his family members and thereby the police has registered offence vide I.Cr.No.76/95 for offences made punishable under sections 452, 448, 341, 342, 397, 398, 411 and 506(2) IPC and also under section 135 of Bombay Police Act. That the police officers of Porbandar City B.Division Police station investigated the offences and during the course of investigation apprehended four accuseds including the present petitioner on 22.4.95. That the police has recovered various articles of muddamal from the said accuseds. That the petitioner along with other three accused is charged on or about 14th July, 1995 and Sessions Case No.47/95 has been registered in the court of Addl.Sessions Judge, Porbandar.

4. The petitioner has contended that the original complainant-Chandrakant Jethalal Joshi being a prominent and influential person at Porbandar no advocate of local bar at Porbandar had agreed to accept the case of the petitioner. and as such the petitioner could not avail the legal services of any advocate when charge was framed and recording of evidence had commenced in the said case. It is also the case of the petitioner that he has orally requested the court to provide him legal aid. However, the court has not paid any heed to the request made by the petitioner. That on or about 24.11.1997 the court had started recording the evidence though some of the accused were not present in the court. That thereafter the matter was adjourned from time to time and despite every effort made by the petitioner the petitioner could not get any advocate to represent him. That as the court

had not paid any heed to the request of the petitioner in providing him legal aid and had started recording evidence even in the absence of accused the petitioner has apprehension that on account of influential personality of the original complainant the court is biased towards the accused. Further more, on 17.12.1997 the petitioner made written request to provide legal aid stating various instances and attempts made by him to engage local advocate. That the petitioner has also prayed in the said application to provide him time so that he can approach the High Court to make an application for transfer. That vide order, dated 17.12.1997 the court has rejected the said application. However, the court had granted time upto 8.1.1998 to obtain appropriate order from the High Court and thereafter the petitioner has lodged the present petition.

5. Mr.Yatin Soni, Ld.advocate appearing on behalf of the petitioner has urged that the fact that the Ld.Addl.Sessions Judge has started recording the evidence even in the absence of some of the accused and has failed to pay any heed to the oral request of the petitioner to provide him legal aid disclose the justification to the apprehension of the petitioner that the court is biased against him and he is not likely to get justice, and thereby also it is necessary to transfer the said sessions case from the file of the Ld.Additional Sessions Judge at Porbandar to anyother district except Junagadh district.

6. It may be noted that during the earlier hearing of the petition an attempt was made to make arrangement for the purpose of providing legal assistance to the petitioner at Porbandar and an advocate, Mr.Baki who was present in the court has shown his willingness to represent the petitioner at Porbandar and thereby the matter was adjourned so that the petitioner could take appropriate decision. That on the next day Ld.Advocate appearing for the petitioner has stated at Bar that though advocate Mr.Baki agreed in the court to represent the petitioner, subsequently, he had refused to represent the petitioner and as such the petitioner could not get any advocate. That at that juncture it was suggested that an arrangement may be made if acceptable to the petitioner to request the Legal Aid Cell at High Court to provide legal assistance to the petitioner. However, after taking instructions from the petitioner, Ld.Advocate has stated at Bar that as the petitioner has

lost confidence in the court and he has preferred present application for transfer; the petitioner has reasonable apprehension that he will not get justice from the court even if legal assistance is provided through High Court Legal Aid Cell and as such the Ld.Advocate appearing for the petitioner has urged that the application may be decided on merits.

7. It is submitted by Mr.Yatin Soni that the legal aid is a fundamental right of the accused and on account of nonavailability of suitable advocate at local bar there is a just ground as provided under section 407 of Cr.P.C. to transfer the said sessions case from the file of the Ld.Addl.Sessions Judge, Porbandar. To support his submission he had referred to and relied upon the observations made in the matter of Elta vs Zahoor Ahmad reported in AIR 1925 OUDH 672 and in the matter of Mathura Prasad vs State of MP reported in 89(2) Crimes 250.

8. Having given my anxious thought to the facts and circumstances emerging from the material produced on record, in my opinion the apprehension shown by the petitioner to the effect that he is not likely to get fair and impartial trial in the court of Ld.Addl.Sessions Judge, Porbandar in the said sessions case has no justification. That the scrutiny of material disclose that the accused persons have time and again prayed for adjournment one by one to prolong the proceedings. That at no point of time any sincere effort appears to have been made on the part of the petitioner to avail free legal aid from the Legal Aid Committee under the District Judge, Junagadh. That the refusal of the petitioner to accept the legal assistance, if provided, from the High Court Legal Aid Cell suggests that the petitioner has filed the present petition without any bonafides. That there is no material placed on record so as to infer reasonable belief that the Ld.Addl.Sessions Judge has shown any bias against the accused, particularly, the present petitioner. That in the absence of any material produced on record to support the contention that the petitioner is not likely to get a fair and impartial trial in the said Sessions Case No.47/95 being conducted by the Ld.Addl.Sessions Judge, Porbandar it has to be held that the petitioner has filed the present petition only with a view to prolong the proceedings of the sessions case under one pretext or the other which can not be permitted.

9. On the basis of above-stated discussion, petition fails and stands disposed of as rejected. However, in the facts and circumstances no order as to costs. Rule is discharged. Interim relief granted vide order, dated 30.12.1997 and extended till 27.2.98 vide order, dated 13.2.98 stands vacated. Writ to be directly sent to the Court of Id.Additional sessions Judge, Porbandar, Dist.Junagadh so as to proceed further with the trial of Sessions Case No.47/95 in accordance with law; however, after 27.2.98.

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